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8 Attorneys for Plaintiff  
9 STEMGENEX<sup>®</sup>, INC.

10 **UNITED STATES DISTRICT COURT**  
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 STEMGENEX<sup>™</sup>, INC.,

13 Plaintiff,

14 v.

15 TOM BALSHI, M.D., a Medical  
16 Corporation dba TOM BALSHI,  
17 M.D., P.A., TOM BALSHI, M.D., an  
18 individual, and DOES 1 through 20,

19 Defendants.

CASE NO. '15CV0411 BTM MDD

**COMPLAINT FOR TRADEMARK  
INFRINGEMENT AND BREACH  
OF CONTRACT**

**Jury Trial Requested (FRCP 38)**

20 Plaintiff STEMGENEX INC. alleges the following against Defendants Tom  
21 Balshi, M.D. a Medical Corporation dba Tom Balshi, M.D., P.A.; Tom Balshi, an  
22 individual, and Does 1-20.

23 **THE NATURE OF THE CASE**

24 1. Plaintiff STEMGENEX sues primarily to stop Defendants' use of  
25 STEMGENEX' confidential proprietary business information and to stop  
26 defendants' infringement of STEMGENEX' federally registered trademark  
27 "STEMGENEX<sup>®</sup>." Plaintiff also seeks damages for Defendants' trademark  
28 infringement and for the profits defendants earned through the misuse of  
STEMGENEX' proprietary information.

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1           2.     Dr. Balshi obtained access to STEMGENEX business information  
2     under a 2012 written agreement or contract (hereafter "Agreement") in which he  
3     promised "not to utilize any STEMGENEX business confidential information or  
4     business processes for his own benefit or the benefit of others except as is  
5     authorized by this Agreement." Dr. Balshi broke his promise and used  
6     STEMGENEX' marketing ideas, business organization strategies, business  
7     processes, website design and pricing information to create his own business  
8     competing directly against STEMGENEX at the same time he was in contract with  
9     STEMGENEX.

10           3.     To trade on STEMGENEX trademark and goodwill, he named his  
11     business and website STEMEDIX. Plaintiffs bring this action at law and equity  
12     for trademark infringement, arising under the Trademark Act of 1946, 15 U.S.C. §  
13     1051, *et seq* (the "Lanham Act"), and for breach of contract.

#### 14                                   **THE PARTIES**

15           4.     STEMGENEX, Inc. is a business entity incorporated under the laws of  
16     California with its principal place of business in La Jolla, California.

17           5.     On information and belief, Tom Balshi, M.D., a self-described  
18     "Medical Corporation dba Tom Balshi, M.D., P.A." is a medical doctor practicing  
19     medicine under a limited liability company structure, with an office in Delray  
20     Beach, Florida.

21           6.     On information and belief, Tom Balshi is the individual who practices  
22     medicine under the dba "Tom Balshi, M.D., P.A." and who resides in or around  
23     Delray Beach, Florida.

24           7.     The Defendants named "Doe" are persons unknown at this time but  
25     who are believed to have acted in concert with the named defendants in committing  
26     the Lanham Act violations alleged in this Complaint, primarily through the website  
27     named www.stemedix.com They are persons who are believed to be jointly and  
28     severally liable with the named Defendants for the injury and damages alleged in

1 this Complaint. Plaintiff will take steps to name and join such Doe defendants  
2 when their identity can be discovered.

### 3 **JURISDICTION AND VENUE**

4 8. This Court has original jurisdiction over this case pursuant to 28  
5 U.S.C. §§ 1331 and 1338, and 15 U.S.C. §§ 1116 and 1121. This Court has  
6 supplemental jurisdiction over Plaintiffs' contract claim brought under California  
7 law pursuant to 28 U.S.C. §1367, because those claims form part of all the same  
8 case or controversy as the claims founded on the Lanham Act.

9 9. The Court has personal jurisdiction over Defendants because  
10 defendants traveled to California for purposes related to their contract with  
11 STEMGENEX. Defendants, using interactive marketing solicitations, including  
12 their interactive website www.STEMEDIX.com , have solicited interactive  
13 communications and have conducted interactive commercial exchanges with  
14 citizens and residents of California. Since August 30, 2012, defendants have  
15 consistently interacted with STEMGENEX La Jolla, California-based personnel  
16 for the purpose of Defendants providing services to individuals that STEMGENEX  
17 introduced to defendants. Defendants have directed their world wide web  
18 marketing efforts to individuals residing in California and other states.

### 19 **VENUE**

20 10. Venue is proper in this District pursuant to 28 U.S.C. §1391(b)(3), in  
21 that, based upon information and belief, the defendants are subject to personal  
22 jurisdiction in this judicial district.

### 23 **FACTS COMMON TO ALL CLAIMS**

#### 24 **Adult Stem Cell Therapy**

25 11. Since 2007, STEMGENEX founder, Rita Alexander, has been a  
26 pioneer in facilitating stem cell therapy to patients throughout the world.  
27 STEMGENEX' mission is to change the lives of patients diagnosed with  
28 degenerative illnesses through stem cell therapy.

1           12.   STEMGENEX' work revolves around the use of human stem cells  
2 derived from the adult human body for medical treatment of the (often elderly)  
3 human body. Stem cells are unprogrammed cells in the human body that have been  
4 described in the medical and scientific literature by the colorful label "shape  
5 shifters." Under the right circumstances, these cells have the ability to change or  
6 "differentiate" into other types of cells. Stem cells are at the center of a new field  
7 of science and medicine known as "regenerative medicine." Because stem cells can  
8 become bone, muscle, cartilage and other specialized types of cells, they have the  
9 potential to treat many diseases, including Parkinson's, Alzheimer's, Diabetes and  
10 more.

11           13.   The stem cell therapy itself is ordinarily an outpatient procedures that  
12 generally involves these steps: careful patient assessment by medical doctors,  
13 determination that stem cell therapy is indicated, the extraction of a small amount  
14 of the adult patient's body fat in a mini-liposuction procedure under mild general  
15 anesthesia, the concentration and activation of select stem cells that naturally  
16 occur in human fatty tissues, and the reintroduction of the concentrated stem cells  
17 back into the patient's own body according to medical and scientific protocols that  
18 enhance the efficacy of the treatment.

19   **The Mission of STEMGENEX and Its Business Model**

20           14.   STEMGENEX conducts stem cell therapy research, actively provides  
21 information and education through various media outlets about stem cell therapy,  
22 and facilitates individual patient-candidates' access to physicians who are trained  
23 and qualified to perform the therapy. Dr. Balshi *was* one such physician.

24           16.   STEMGENEX reaches members of the public who are interested in  
25 stem cell therapy primarily through its website, [www.STEMGENEX.com](http://www.STEMGENEX.com). The  
26 website is highly interactive, making it very simple for a person seeking  
27 information or introduction to treating physicians to contact STEMGENEX by  
28 telephone, by email and by direct inquiry through the website.

1           15. When an individual makes an inquiry, one of STEMGENEX' Patient  
 2 Advocates responds, usually by telephone, to answer questions and provide  
 3 information about the availability of stem cell therapies. STEMGENEX will then  
 4 introduce a patient-candidate to the appropriate medical doctor . When a patient-  
 5 candidate is approved for a stem cell therapy procedure by the doctor,  
 6 STEMGENEX calculates the costs for the patient's treatment, including (but not  
 7 limited to) the physician's fee, the surgical center costs, and the patient's travel and  
 8 lodging if required. STEMGENEX presents a fee proposal to the patient that  
 9 covers all of those costs and includes a fee for STEMGENEX to pay for its work  
 10 facilitating the patient's introduction to the physician and journey to the place  
 11 where the procedures are performed by the physician.

12 **The STEMGENEX<sup>®</sup> Trademark**

13           16. On the initiative of STEMGENEX founder, Rita Alexander, an  
 14 application to register the trademark "STEMGENEX" was filed with the United  
 15 States Patent and Trademark Office on October 12, 2010.

16           17. STEMGENEX, Inc. is the owner of the Registered Word Mark  
 17 "STEMGENEX." That trademark was added to the USPTO's Principal Register  
 18 on July 17, 2012 and assigned Registration No. 4176338.

19           18. The trademark registration has not been abandoned, cancelled or  
 20 revoked.

21           19. The STEMGENEX trademark is registered in International Class 35  
 22 (Goods and Services) with this description:

23           Business services, namely, referring individuals to  
 24 medical services related to stem cell therapies; business  
 25 introduction services, mainly, interfacing clients and  
 26 health care practitioners and therapists, namely, medical  
 27 referral services; providing medical, health and stem cell  
 28 therapeutic referrals to individuals and practitioners;  
 providing referral services to individuals in the fields of  
 health care and well-being, wellness and stem cell  
 therapy.

///  
 28

1           20. Since at least mid-2012, STEMGENEX has consistently used the  
2 STEMGENEX word mark in commerce to designate its distinctive and pioneering  
3 work in the field of stem cell therapy. It is easily identifiable and recognizable in  
4 the community of potential patients, medical service providers and academics who  
5 are interested in stem cell therapy and research.

6           21. In marketing its services, STEMGENEX has spent substantial sums of  
7 money to develop its marketing materials, including its website, and the name  
8 "STEMGENEX" in order to educate and provide services to patient-candidates for  
9 stem cell therapy.

10          22. STEMGENEX has made a substantial financial investment in the  
11 marketing, promotion and advertising of its services, its research and educational  
12 initiatives and in the maintenance and operation of its offices and staff in  
13 San Diego, California.

14 **The Agreement between STEMGENEX and Dr. Balshi**

15          23. STEMGENEX entered into its Agreement with Defendants effective  
16 August 30, 2012.

17          24. The Agreement provided that Dr. Balshi would be one of the  
18 physicians who would be able to provide stem cell therapies to individuals  
19 introduced to him by STEMGENEX.

20          25. The Agreement provided that Dr. Balshi would perform, at a pre-  
21 determined price, the stem cell therapy procedures contemplated in the Agreement.  
22 Dr. Balshi's duties included reviewing medical histories; determining "in his sole  
23 discretion" which patients would receive treatment; administer the treatments as  
24 determined by Dr. Balshi "in his sole discretion;" maintain all personal, personnel  
25 and facilities' licenses and qualifications in good standing; and to be on-call, as  
26 necessary, for urgent or other post-procedure needs.

27          26. The Agreement provided for STEMGENEX to maintain full-time staff  
28 and offices from which



(1) They monitor the research of medical and cosmetic successes and advancements made by stem cells and their applications, and

(2) They design, develop and deploy sales and public relations programs and applications including but not limited to (a) website development and management, which requires systematic updating of content, design, and enhanced capabilities, (b) a marketing system designed to educate medical professionals, and the public at large, through said website, and links thereto and therefrom, as well as through Newsletters, Press Releases, education collateral and "Webinars" on the advantages of considering stem cell treatment generally and to STEMGENEX specifically,

(3) They will employ a full-time team of skilled and knowledgeable "Lead Management" professionals to respond to inquiries generated through STEMGENEX programs, follow-up, pre-qualified candidates for availability of procedures (medically and financially),

(4) They will provide (a) administrative support to and handle administrative requirements including pre-qualification, patient education, obtaining of medical histories, lab reports and other pertinent medical data, including billing and payment collection services, accounting, travel, lodging, scheduling of orientations and procedures for patients; (b) transport services from hotels to the clinic/place of treatment and return; (c) they will manage onsite (hotel and clinic) issues and post-treatment support and next day follow-up.

(5) They will conduct educational and advertising campaigns which include advertising in various publications and postings on numerous websites. ... Develop and implement business development programs to enhance the growth of the business. ...

***Provide prospective patients to Tom Balshi, M.D., P.A.***

Quotations are from the Agreement, ***emphasis added***.

27. The Agreement contains a confidentiality and non-use provision which state in relevant part,

All of STEMGENEX collateral materials, plans and programs, and patient information are all confidential information and may not be disclosed by Tom Balshi, M.D., P.A. without the prior written consent of STEMGENEX. ...

///

1 Tom Balshi, M.D., P.A. agrees not to utilize any  
2 STEMGENEX business confidential information or  
3 business processes for his own benefit or the benefit of  
4 others except as is authorized by this Agreement, nor shall  
he disclose in any form or fashion directly or indirectly  
any STEMGENEX confidential business practices.

5 Quotations are from the Agreement.

6 28. Since August 30, 2012, when the Agreement went into effect,  
7 STEMGENEX has performed all of its material duties and responsibilities under  
8 the Agreement. During that time, STEMGENEX has referred numerous patient-  
9 candidates to Dr. Balshi from several different states. Dr. Balshi has been paid  
10 significant sums of money in fees for the medical services he has provided to the  
11 patient-candidates who are clients of STEMGENEX.

12 29. After the Agreement went into effect on August 30, 2012,  
13 STEMGENEX disclosed and entrusted Dr. Balshi with virtually all of its  
14 marketing materials, marketing know-how, website design, and substantive content  
15 concerning stem cell research and stem cell therapies that STEMGENEX  
16 developed and improved over the years.

17 **Dr. Balshi's Trademark Infringement and Misuse of Proprietary Information**

18 30. Within the last six months, STEMGENEX became aware that after  
19 Dr. Balshi signed the August 30, 2012 Agreement with STEMGENEX, he created  
20 a new and separate company that he named STEMEDIX to perform stem cell  
21 therapy outside of his Agreement with STEMGENEX and in competition with  
22 STEMGENEX.

23 32. STEMGENEX introduced Dr. Balshi to patient-candidates that Dr.  
24 Balshi decided to treat with stem cell therapy, but he did not treat them under his  
25 Agreement with STEMGENEX. Instead, he diverted them to his separate  
26 company, STEMEDIX, to perform the therapy treatments, depriving  
27 STEMGENEX of revenue STEMGENEX expected to receive under the  
28 Agreement.



1           31. Dr. Balshi named his competing company “STEMEDIX,” a name that  
2 he uses in his marketing and broadcasting to the entire world via his company  
3 website, www.STEMEDIX.com.

4           32. Using the company named “STEMEDIX,” and using the word in his  
5 website address, Dr. Balshi misappropriated plaintiff’s trademark as well as  
6 STEMGENEX’ confidential business information, business operations, and other  
7 proprietary confidential information. Like the STEMGENEX website,  
8 STEMEDIX is highly interactive in the same way. Through STEMEDIX.com  
9 Dr. Balshi has created interactive relationships with individuals throughout the  
10 United States, including California, and has created or attempted to create a market  
11 for his STEMEDIX services in direct competition with STEMGENEX and to the  
12 detriment of STEMGENEX relationship with him.

13           33. Dr. Balshi registered a domain name for a marketing website,  
14 STEMEDIX.com, on December 27, 2012. The website went “live” with content no  
15 later than April 1, 2013. According to one on-line service that tracks and calculates  
16 visitors to websites as of January 7, 2015, STEMEDIX received 178 visitors per  
17 day. By extrapolation, that equates to as many as 64,000 visitors in a single year.

18           34. Dr. Balshi’s STEMEDIX business name and website address is  
19 confusingly similar to the STEMGENEX trademark owned by Plaintiff.  
20 Defendants embedded into their website keywords that are designed to capture  
21 browsers searching for stem cell therapy in Florida; for example “parkinsons  
22 Florida. However, the defendants embedded keywords designed to expand the  
23 reach of the site beyond Florida, using that include, but are not limited to, “stem  
24 cell therapy” and “stem cell treatment.”

25           35. Based upon information and belief, Dr. Balshi chose the name  
26 STEMEDIX for his competing stem cell therapy services with the intention of  
27 confusing the public and trading on the reputation and name recognition of  
28 STEMGENEX in the field of stem cell therapy.

1           36. The STEMEDIX website is laid out, and formatted in a manner to give  
2 it a confusingly similar look and navigation feel to the STEMGENEX website. The  
3 color scheme and organization of content is confusingly similar to the  
4 STEMGENEX website.

5           37. STEMGENEX has been informed by clients that they have been  
6 solicited by STEMEDIX, which has offered to provide stem cell therapy and other  
7 services to them.

8 **Dr. Balshi's Admission of Wrongdoing**

9           38. After STEMGENEX learned that Dr. Balshi was offering stem cell  
10 therapy to clients introduced to them by STEMGENEX, Plaintiff's founder, Rita  
11 Alexander, telephoned Dr. Balshi at 1:30 p.m. PST on December 15, 2014.

12 **Statements Made During the December 15, 2014 Telephone Call**

13           39. After exchanging pleasantries, Ms. Alexander said that she understood  
14 that Dr. Balshi was "working with STEMEDIX."

15           40. Dr. Balshi said that he founded the company STEMEDIX.

16           41. Dr. Balshi said STEMEDIX was his "little company."

17           42. Dr. Balshi said that he was using STEMEDIX to market stem cell  
18 therapy on the Internet without "exposing himself (his own name) too much."

19           43. Ms. Alexander told Dr. Balshi that she was very disappointed that he  
20 had created his own separate business, using the marketing and business practices  
21 that STEMGENEX had given to him under their August 30, 2012 Agreement.

22           44. Dr. Balshi said that through the STEMEDIX website, he had recruited  
23 and treated patients not only who lived in Florida, but in other states.

24           45. Ms. Alexander told Dr. Balshi that naming his company STEMEDIX  
25 was a way to confuse the public into working with Dr. Balshi as STEMEDIX when  
26 they thought they were working with Dr. Balshi through STEMGENEX.

27           46. Ms. Alexander told Dr. Balshi that STEMEDIX had been contacted by  
28 individuals asking what the connection was between STEMGENEX and

1 STEMEDIX.

2 47. Ms. Alexander told Dr. Balshi that she would have to consider  
3 terminating STEMGENEX' Agreement with him.

4 48. After hearing that the Agreement for him to receive patient-candidate  
5 introductions might be terminated, Dr. Balshi expressed remorse over what he had  
6 done.

7 49. Ms. Alexander told Dr. Balshi that she could no longer trust him and  
8 that his actions "stung" worse now that she knew that he was not only working with  
9 but was the owner of STEMEDIX.

10 50. Dr. Balshi responded to the immediately preceding statement saying  
11 words to the effect, "I will think about whether I want to do away with  
12 STEMEDIX."

13 51. Dr. Balshi said he would consider doing away with STEMEDIX in  
14 order to "mend" his relationship with and continue his relationship with  
15 STEMGENEX.

16 52. Several days after the December 15, 2014 telephone call,  
17 STEMGENEX learned from another client that STEMEDIX was continuing to  
18 solicit the client to receive services from STEMEDIX.

19 53. On December 23, 2014, the undersigned, acting on behalf of  
20 STEMGENEX, sent a cease and desist letter to Dr. Balshi. A true and correct copy  
21 of the letter is attached as Exhibit A.

22 54. On January 8, 2015, Attorney John R. Gillespie responded on behalf of  
23 Dr. Balshi, denying that Dr. Balshi had any connection whatsoever with  
24 STEMEDIX.

25 **FIRST CLAIM FOR RELIEF**

26 **Trademark Infringement under the Lanham Act**

27 55. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through  
28 54 of the Complaint as if fully set forth herein.

56. Defendants' unauthorized use of Plaintiff's Trademarks and related activities as alleged above, and their marketing using the domain name www.stemedix.com infringe upon Plaintiffs' rights under the Lanham Act in such marks by showing a bad-faith intent to profit from Plaintiff's Trademark by using Defendants' STEMEDIX name in a confusingly similar manner to Plaintiff's Trademark and/or in a manner dilutive of the STEMGENEX Trademark.

57. Defendants' acts therefore violate 15 U.S.C. §1125(a). As set forth above, Plaintiffs have previously notified Defendants of their obligation to cease use of Plaintiff's Trademark and to discontinue all infringement and misuse. Defendants have failed to do so. Accordingly, Defendants' infringement is intentional and willful. Further, Defendants' wrongful acts in connection with the ongoing infringement, are causing irreparable harm to Plaintiff for which Plaintiff has no adequate remedy at law.

58. As a result of Defendants' intentional or reckless and/or negligent, trademark infringement, Plaintiff has suffered and is entitled to damages in an amount to be proven at trial, including, but not limited to, actual monetary damages or statutory damages, preliminary and permanent injunctive relief, costs and attorneys' fees.

59. Plaintiff has no adequate remedy at law, and if Defendants' activities are not enjoined, Plaintiffs will continue to suffer irreparable harm and injury to its goodwill and reputation. Plaintiff has suffered and continues to suffer immediate and irreparable harm due to Defendants' continued actions.

## **SECOND CLAIM FOR RELIEF**

### **Breach of Contract**

60. Plaintiff realleges and incorporates paragraphs 1 through 54 and 56 through 59 as though fully set forth here.

61. Plaintiff had a contractual relationship with Defendant, Tom Balshi, M.D., a Medical Corporation dba Tom Balshi, M.D., P.A., by virtue of the written

1 Agreement dated August 30, 2012.

2 62. Plaintiff had a contractual relationship with Defendant, Tom Balshi,  
3 M.D. by virtue of the written Agreement dated August 30, 2012.

4 63. Plaintiff performed each obligation, condition and covenant required  
5 of it under the Agreement.

6 64. If any of those obligations, conditions and covenants were not  
7 performed, they were excused from performance by virtue of the conduct of the  
8 Defendants set forth in this Complaint.

9 65. Defendant, Tom Balshi, M.D., a Medical Corporation dba TOM  
10 BALSHI, M.D., P.A. had a duty to perform each obligation, condition and covenant  
11 required of it under the Agreement, but failed to do so.

12 66. Defendant, Tom Balshi, M.D., a Medical Corporation dba TOM  
13 BALSHI, M.D., P.A.'s breaches of the Agreement include, but are not limited to:

14 a. Utilizing STEMGENEX business confidential information and  
15 business processes for his own benefit or the benefit of others in violation of what  
16 was authorized by this Agreement;

17 b. Disclosing directly or indirectly STEMGENEX confidential  
18 business practices;

19 c. Creating his own separate company to perform stem cell therapy  
20 outside of his Agreement with STEMGENEX, in direct competition with  
21 STEMGENEX;

22 d. Diverting patient candidates introduced to him by  
23 STEMGENEX to his separate company, STEMEDIX depriving STEMGENEX of  
24 anticipated revenue under the Agreement; and

25 e. Operating under a domain name for a marketing website,  
26 www.stemedix.com, which was registered via "Go Daddy" on December 27, 2012  
27 and populating that website with STEMGENEX proprietary business information  
28 and style of doing business on or around April 1, 2013.

67. Defendant, Tom Balshi, M.D. had a duty to perform certain obligations, conditions and covenants under the Agreement, but failed to do so.

68. As an individual, Tom Balshi was bound to (at least) two promises set forth in the Agreement by virtue of the parties' specific use of the words "he" and "his" - referring to Dr. Balshi himself and not simply his corporate shell.

69. Dr. Balshi breached the Agreement in at least the following ways:

a. He utilized "STEMGENEX business confidential information or business processes *for his own benefit* or the benefit of others" in violation of the limitations set forth in the Agreement; and

b. He violated his promise that, "*he [shall not] disclose* in any form or fashion directly or indirectly any STEMGENEX confidential business practices."

The quotations in this paragraph are taken directly from the language of the Agreement, with emphasis added.

70. As a direct and proximate result of the breaches, Plaintiff has suffered actual monetary damages plus interest at the maximum legal rate.

71. As a direct and proximate result of the breaches, Plaintiff has suffered actual damage and harm to its Trademark interests and its proprietary business information and good will as set forth above.

#### **PRAYER FOR RELIEF**

72. Wherefore, Plaintiff prays for judgment against Defendants as follows:

73. For an order preliminarily and permanently enjoining Defendants from further infringing on Plaintiff's Trademark;

74. For actual damages suffered by Plaintiff plus Defendants' profits or, alternatively, for statutory damages pursuant to 15 U.S.C. §§1116 and 1117;

75. Injunctive Relief, including that pursuant to 15 U.S.C. §1116;

76. For actual damages suffered by Plaintiff as a result of Defendants' tortious conduct;



78. For attorney's fees and costs pursuant to 15 U.S.C. §1117.

Plaintiff STEMGENEX<sup>®</sup>, INC. hereby demands a jury trial as provided in Rule 38 of the Federal Rules of Civil Procedure.

HIGGS FLETCHER &amp; MACK LLP

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EXHIBIT A



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December 23, 2014

(Via Overnight Delivery and email to [drb@balshimd.com](mailto:drb@balshimd.com))

Thomas C. Balshi, M.D.  
4665 W. Atlantic Ave, Suite B  
Delray Beach, FL 33445

Re: Confidential Agreement between Tom Balshi M.D., A Medical corporation dba  
Tom Balshi, M.D. P.A. **and** StemGenex, Inc.

Dear Dr. Balshi,

This law firm represents StemGenex, Inc. and its affiliates. Take notice that StemGenex demands that you immediately cease and desist soliciting patients to perform adipose adult stem cell treatments as you are doing now in breach of the "Confidential Agreement" named above. I include a copy of the agreement bearing your signature for your reference.

Under that Agreement, StemGenex has introduced many of its clients to you who then undergo that treatment. You have received many hundreds of thousands of dollars in fees for the services provided to StemGenex' clients. Under the Confidential Agreement, StemGenex has revealed to you valuable and confidential proprietary information that has made the StemGenex program for studying, educating and facilitating stem cell treatment the success it is today. That proprietary information includes but is not limited to marketing materials, website content, scientific studies, program organization and management procedures, its confidential business practices and pricing structures.

Through investigation, StemGenex has discovered that you have misappropriated StemGenex' proprietary and confidential information and are using it to promote your independent business that copies the StemGenex program. Your separate business is in direct conflict with StemGenex by using the proprietary information provided to you by StemGenex.

Your actions breach the Confidentiality provisions of the Agreement found on page 6, which binds you:

not to utilize any StemGenex business confidential information or business processes for [your] own benefit for the benefit of others except as is authorized by this Agreement nor shall [you] disclose in any form of fashion directly or indirectly any StemGenex confidential business practices.



Thomas C. Balshi, M.D.  
December 24, 2014  
Page 3

During the same time that you have received fees for services flowing from introductions to StemGenex' clients, you simultaneously copied the StemGenex program into your own personal Stemedix company, using StemGenex' proprietary business information. We have even discovered in some of your ad materials a word-for-word copy of StemGenex' marketing text. Your choice of the name "Stemedix" is itself an infringement of StemGenex' trademark rights designed to confuse potential clients about the identity of Stemedix, playing off on the good will and name recognition StemGenex has worked hard for many years to establish. Your actions violate the promises you made in your agreement and make you liable in damages under that agreement and certain provisions of federal and state statutes and the common law.

StemGenex demands that:

1. You delete all marketing and website content that is derived in whole or in part from the StemGenex confidential program materials or its confidential business practices that have been provided to you over the years;
2. You cease using (in all of your ongoing promotion and provision of stem cell treatment services) any material or information derived from StemGenex' proprietary business information and confidential business practices
3. You and all acting on your behalf cease making disparaging comparisons between the StemGenex program and the stem cell treatment program you offer independently.
4. You provide a "Certificate of Destruction" under penalty of perjury affirming that you have destroyed all offending materials and website content as described above;
5. You return all materials of any description received from StemGenex or that promote the StemGenex program, whatever the source, or, alternatively provide a Certificate of Destruction as evidence of their destruction;
6. You provide an accounting, within 45 days, of all revenue received and all resulting profits derived from non-StemGenex clients who received stem cell treatments that were promoted or provided by you using StemGenex' proprietary business materials and practices.
7. Cease all use of the word "Stemedix" (alone or in combination with any other words) in connection with the marketing or provision of any stem cell treatment.

We also understand that you have enlisted other physicians and surgeons in your solicitation of clients using StemGenex' proprietary business information and practices. StemGenex demands that you:



Thomas C. Balshi, M.D.  
December 24, 2014  
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8. Immediately contact all such professionals and provide them a copy of this letter; and
9. Provide the names and contact information of each one to StemGenex within 45 days.

Your failure to respond promptly and affirmatively will be taken as refusal, leaving StemGenex little option but to invoke the binding arbitration provisions in the Confidential Agreement, to which you agreed.

Best regards,

A handwritten signature in black ink, appearing to read "Thomas W. Ferrell". The signature is fluid and cursive, with a large, sweeping flourish at the end.

THOMAS W. FERRELL  
of  
HIGGS FLETCHER & MACK LLP

TWF/lm  
Enclosure

cc: Rita Alexander  
Candace Henderson